



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Educational Technologies, Ltd.

File: B-246408

Date: December 12, 1991

Edward P. Gay, Jr., for the protester.
Peter D. Butt, Jr., Esq., and Katherine A. Andrias, Esq.,
Department of the Navy, for the agency.
Behn Miller, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Under the General Accounting Office Bid Protest Regulations, a protester which is a non-8(a) firm is not an interested party to protest the agency's failure to provide it with a copy of an amendment to an 8(a) solicitation since it would not be eligible to compete for award even if the protest were sustained.

DECISION

Educational Technologies, Ltd. (ETL) protests its nonreceipt of section J and amendment No. 0001 to request for proposals (RFP) No. N00600-91-R-3532, issued by the Department of the Navy under the Small Business Administration's (SBA) section 8(a) program, see 15 U.S.C. § 637(a) (1988), for facilities management services for the Naval civilian personnel data system.

We dismiss the protest.

The RFP was issued on September 10, 1991; the Navy received 300 requests for copies of the solicitation. Because of the size of the complete solicitation and amendments, the Navy states that only 8(a) firms were furnished with a copy of section J and amendment No. 0001; the remaining firms--including ETL--were sent a copy of the solicitation without these two other sections. In this regard, the Navy states that on September 6, SBA provided it with a list of certified 8(a) contractors who were qualified for this

053124 / 145477

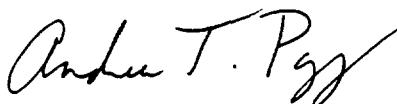
procurement; the Navy further maintains that it verified ETL's non-8(a) status with SBA in response to this protest.¹

ETL concedes that it is not an 8(a) firm; however, in a November 13 submission to our Office, ETL maintains that it nonetheless "meets the established criteria for 8(a) participation." The record does not support this assertion.

As set forth in its agency regulation, 13 C.F.R. § 124.107 (1991), SBA will only approve a small business concern for 8(a) program participation when "it finds that the applicant concern has been in business in its primary industry classification for [2] full years"; absent SBA's approval, a small business concern is ineligible for the 8(a) program. 13 C.F.R. §§ 124.101(a), 124.301(a). In this case, the Navy has provided a copy of ETL's Certificate of Incorporation--certified by the Georgia Secretary of State--which demonstrates that ETL has only been in operation since December 3, 1990; accordingly, ETL is not eligible for 8(a) participation since it does not meet the 2 year requirement of 13 C.F.R. § 124.107.

Under our Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1991), a protester must have a direct economic interest which is affected by the award of a contract in order to be considered an interested party. Here, even if ETL's protest were sustained, it would not be eligible to compete for the contract in question since it is not an eligible 8(a) firm. E.L. Hamm & Assoc., Inc.--Recon., B-231444.2, Aug. 19, 1988, 88-2 CPD ¶ 160.

The protest is dismissed.



Andrew T. Pogany
Assistant General Counsel

¹By letters to the Navy dated November 20 and November 26, SBA verified that ETL is not an 8(a) participant and that ETL has never filed an application for the 8(a) program.